

# Draft General Permit for Shale Gas Exploration Surface Water Impacts

---

## Introduction

Ohio EPA's Division of Surface Water is soliciting comments on a draft general 401 Water Quality Certification (401 general permit) associated shale gas drilling.

## When is a 401 permit required?

If construction at a drill site will impact wetlands, streams or other waters of the state, a drilling operator is required, under the Clean Water Act, to get a Section 401 permit from Ohio EPA and a Section 404 permit from the U.S. Army Corps of Engineers to authorize these impacts. Under these programs, applicants are also required to mitigate impacts by restoring or enhancing wetlands and/or streams elsewhere. Examples of activities at a shale gas drill site that could require a 401 permit include:

- Excavating or placing fill material in a wetland, stream or lake;
- Stream piping, rerouting or straightening;
- Channelization;
- Dredging a wetland area;
- Dredging or placing fill material into waters of the state;
- Crossing streams or wetlands to construct roadways, water or wastewater piping.

## What is a general permit and why is Ohio EPA preparing one for the shale gas industry?

The 401 general permit was prepared in anticipation of increased shale gas drilling operations in Ohio due to the discovery of additional natural gas reserves in the Marcellus and Utica shale formations. Ohio EPA has developed general permits for many industry sectors under both its air and water programs. The Agency believes the general permit approach provides a good balance between efficiency in processing permits for an industry sector that requires responsive regulation, while protecting water quality.

A general permit is a permit where all the terms and conditions of the permit are developed in advance. An applicant can review the general permit qualifying criteria, terms and conditions, and then apply to Ohio EPA for coverage under the general permit. Ohio EPA reviews the applicant's information to confirm they meet the qualifications and issues the general permit.

The biggest advantage of the general permit approach is timelier issuance of a permit. By addressing the detailed rule/technical analysis and development of permit conditions up front, Ohio EPA can reduce the approval process to a matter of weeks. Generally, with companies seeking individual (non-general) 401 permits, the approval process can take up to the statutorily allowed timeframe of 180 days.

## What does the general permit cover?

This general permit is available only to projects that Ohio EPA has classified as having relatively small wetland and/or stream impacts. The 401 general permit would apply only to projects which will impact up to 0.5 acres of Category 1 and 2 wetlands, and up to 300 linear feet of stream impacts. The general permit is not available where a project would impact Category 3 (high quality) wetlands and high-quality streams.

Companies applying for the 401 general permit are also required, as part of the permit, to provide compensatory mitigation impacts to streams or wetlands. Mitigation activities may include:

- Purchasing credits at mitigation banks;
- Restoring, enhancing and/or preserving stream or wetland either on the project site or elsewhere in the watershed where impacts will occur;
- Paying into the Surface Water Improvement Fund or to an In-Lieu Fee program (currently under development).

It is important to know the terms and conditions of the general permit are just as stringent and protective as an individual permit. In addition, if a drilling operator requires a permit and determines the site does not meet the qualifying criteria for a general permit, the operator is required to apply for and receive an individual 401 permit. When more than 0.5 acres of wetland or 300 linear feet of

# **Draft General Permit for Shale Gas Exploration Surface Water Impacts**

---

stream, or any Category 3 wetland is impacted, the project is not eligible for coverage under the general permit

It is also important to know that applying for a 401 general permit from Ohio EPA does not, in any way, relieve an applicant of the responsibility to obtain a 404 permit from the U.S. Army Corps of Engineers. It is anticipated that many oil and gas-related projects will require dual authorization from Ohio EPA under our 401 program and from the U.S. Army Corps of Engineers under the 404 program. Anyone with questions about the 404 permitting requirements should contact the U.S. Army Corps branch office with jurisdiction over the drill site.

## **What are the steps in applying for a 401 general permit?**

The 401 review process will not change substantially for the general permit. Ohio EPA will still require that applications contain all the information currently required by state law. The primary difference is Ohio EPA will complete the 401 review within 30 days. The 401 general permit will not change the U.S. Army Corp's 404 permit application or review process.

## **How is the public involved in the general permit process?**

Interested parties, including citizens, environmental groups and industry, are encouraged to comment on the draft permit, which is available at [www.epa.ohio.gov/shale.aspx](http://www.epa.ohio.gov/shale.aspx).

Comments should be emailed to [patti.smith@epa.ohio.gov](mailto:patti.smith@epa.ohio.gov) or mailed to Ohio EPA, Division of Surface Water, Attention: Permits processing Unit, P.O. Box 1049, Columbus, OH, 43216-1049. The comment period closes January 13, 2012.

For additional information on the draft general permit, contact Tom Harcarik, Division of Surface Water at (614) 644-2139.

## **Where can I get more information?**

General information about shale drilling is available on Ohio EPA's website at [www.epa.ohio.gov/shale.aspx](http://www.epa.ohio.gov/shale.aspx).

The Ohio Department of Natural Resources Division of Oil and Gas Resources Management regulates many aspects of the oil and gas industry, including well drilling, construction and operation. For more information, visit <http://www.ohioshaleinfo.com>